



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Harbert International, Inc.

File: B-222472

Date: July 15, 1986

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### DIGEST

GAO cannot question exclusion of protester's proposal from competitive range where proposal reasonably was found deficient in some areas to the extent that a completely new proposal would have been necessary in order for the proposal to have been considered to be competitive.

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### DECISION

Harbert International, Inc. (Harbert), has protested its exclusion from the competitive range under Request for Proposals (RFP) No. DAKF71-85-R-0204, issued by the Department of the Army for base operations support and services under a cost-plus-award fee contract at the Palmerola Air Force Base, Honduras, for a base period of May 1, 1986, through September 30, 1986, with additional 1-year options for fiscal years 1987, 1988, 1989, and 1990, respectively. Harbert contends that its proposal was not "grossly" deficient and should have been admitted to at least the initial competitive range of proposals received under the RFP. We deny the protest.

Harbert also requests that we release certain information which the Army has refused to release to the company. To the extent that Harbert's request is under section 3553(f) of the Competition in Contracting Act of 1984, 31 U.S.C.A. §§ 3551-3556 (West Supp. 1985), the contracting agency has the primary responsibility for determining which documents are subject to release. Employment Perspectives, B-218338, June 24, 1985, 85-1 C.P.D. ¶ 715. To the extent Harbert is requesting disclosure of the Army's documents under the Freedom of Information Act, 5 U.S.C. § 552 (1982), only the contracting agency and the courts have authority under the act to determine what information agencies must disclose. However, we have considered the information in reaching our decision.

The Army determined that Harbert's proposal should not be considered to be within the competitive range because it did not have a reasonable chance of being selected for award given the Army's perception of the proposal's deficiencies. Harbert, on the other hand, contends that the Army has incorrectly evaluated its proposal in a number of respects and its proposal does deserve to be considered to be within the competitive range.

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The evaluation of proposals and the resulting determination as to whether an offeror is in the competitive range is a matter within the discretion of the contracting activity, since it is responsible for defining its needs and the best methods of accommodating them. Maxima Corp., B-220072, Dec. 24, 1985, 85-2 C.P.D. ¶ 708. Generally, offers that are unacceptable as submitted and would require major revisions to become acceptable are not for inclusion in the competitive range. See Essex Electro Engineers, Inc.; ACL-Filco Corp., B-211053.2, B-211053.3, Jan. 17, 1984, 84-1 C.P.D. ¶ 74. Further, we have held that, in reviewing an agency's evaluation, we will not evaluate the proposal de novo, but instead will only examine the agency's evaluation to ensure that it had a reasonable basis. Syscon Corp., B-208882, Mar. 31, 1983, 83-1 C.P.D. ¶ 335.

The Army explains that while Harbert is the incumbent contractor for the current contract at the Air Base, there are significant differences in the scope of the work required under this RFP and Harbert's current contract. The Army states that these differences include: (1) the RFP requirement for certain facilities to be constructed (referred to as an "industrial complex"); (2) the management of the supply system at the base now being accomplished by federal employees; (3) total operation of the "DAS-3" computer system in Honduras and Panama; and (4) maintenance of communication/electronic equipment not currently being performed by Harbert.

The RFP stated the significant evaluation standards to be Technical, Management, Quality Control, and Cost in descending order of importance. Technical was weighted approximately twice as important as any of the other standards. Also, although cost was not to be scored or weighted as such, cost was to be fully evaluated to the extent that award would be made based on the proposal "which has the best overall value to the Government."

Notwithstanding the increased scope of work described in the RFP compared with the scope of work found in Harbert's existing contract, the Army considered that Harbert's proposal maintained its scope of responsibility at Harbert's current contract level, rather than the increased level set forth in the RFP as determined by the Army. Although Harbert argues that the Army has not established the validity of its comparison of the RFP to Harbert's current contract, we consider the Army's statement that the RFP reflects substantially increased requirements to be accurate in the absence of contradictory evidence which has not been furnished by Harbert. See Freedom N.Y., Inc., B-219676, Dec. 6, 1985, 85-2 C.P.D. ¶ 635.

For example, the Army considers that Harbert's management proposal showed lack of knowledge of the supply function and Harbert's intent to maintain its scope of responsibility at the contract's present level rather than the increased requirement described in the RFP. For example, the Army refers to Harbert's statement in its proposal reserving Harbert's right to change current supply forms and records (other than those specified by "Government directives") currently utilized by federal employees.

The Army concluded that this statement indicated that Harbert was contemplating reduction in supply forms and raised doubts concerning Harbert's recognition of the expanded scope of work regarding supplies required under the RFP. Harbert argues that it would not have altered "Government forms"; however, it is clear that Harbert was contemplating the possible elimination of supply forms now being used by federal employees--those forms not specifically required by "Government directives"--otherwise Harbert would have not made this statement. Harbert was reserving--to some unspecified degree--the right to determine the records requirement of the supply function as it saw fit. Under these circumstances, we find reasonable the Army's view that Harbert's proposal raised serious concerns regarding Harbert's understanding of the expanded scope of supply work required under the RFP and its commitment to meet RFP supply function requirements.

The Army also found Harbert's proposal for equipment necessary for the supply function to be inadequate as the proposal seemed to be based on the amount of current equipment available to Harbert rather than on an assessment of the additional equipment needed to meet the increased scope of the RFP. In reply, Harbert states that the RFP contained a "small amount of data" on which to base an equipment proposal. However, the RFP provided data concerning the estimated workload of supply operations. Moreover, Harbert did not question the adequacy of the RFP in this area before submitting its proposal. In these circumstances, we find reasonable the Army's finding of a deficiency in this regard. Again, the Army reasonably found that Harbert's offer raised concerns that Harbert had not considered the increased scope of the supply function of this RFP or the cost of meeting the increased scope of the supply function. Although Harbert insists that it, nevertheless, proposed equipment based on the RFP and not based on its present operations, this bare statement simply questions the Army's evaluation judgment that Harbert's supply equipment proposal simply did not reflect the increased scope of work required under the RFP. This questioning, in itself, does not show that the Army's judgment is unreasonable, however, for it is well-established that the protester's mere disagreement with the contracting agency's evaluation does not render the evaluation unreasonable. See General Management Systems, Inc., B-214246, Sept. 25, 1984, 84-2 C.P.D. ¶ 351.

The Army has listed several other inadequacies in Harbert's proposal to which Harbert has replied in considerable detail. Based on our review of the record, we nevertheless cannot conclude that Harbert's discussion establishes the Army's unreasonableness in excluding the company's proposal from the competitive range.

For example, in several areas of proposal deficiencies--DAS-3 computer operations, methodology for certain transportation services, and the "Facilities Engineer" function--it is our view that Harbert simply disagrees with the Army's evaluation without showing that the evaluation is unreasonable. Specifically, under DAS-3 computer operations, Harbert insists--contrary to the Army's evaluation--that the computer personnel which the company proposed have the required qualifications, yet Harbert has not established on the record its proposed employees' qualifications. Under transportation services, Harbert argues that it

did provide all required details of these services. Under Facilities Engineer, Harbert insists that it adequately staffed this function contrary to the Army's view. In all of these areas, we find that the Army reasonably found Harbert's proposal deficient.

Further, in two other areas of the RFP--linen services and industrial complex facilities--Harbert's proposal directly conflicted with the RFP. The RFP required that all linen services were to be offered on a daily basis. Nevertheless, Harbert stated that it would provide the "dates and times" that these services would be available--thus, reserving the apparent right to deviate from a daily schedule of services if Harbert so desired.

Harbert also failed to address adequately the RFP requirement for a plan and cost of industrial complex facilities required by the RFP. An amendment to the RFP provided that:

"Para. C.4.1 [of the RFP] Regarding the Industrial Complex.  
The plan for the industrial complex is for evaluation. . . .  
The contractor shall provide all facilities . . . All  
costs . . . will be included in item 0001 upon award of  
contract."

Paragraph C.4.1 of the RFP described the facilities involved in the industrial complex and required the contractor to vest title to the facilities to the government at the end of the contract.

Harbert proposed to rent certain existing facilities to the government and to unilaterally "establish at the end of the contract a fair market price" for industrial complex facilities that would serve as a basis for sale of the facilities to the government instead of directly vesting title to the facilities in the government at the end of the contract as the RFP provided. Thus, Harbert proposed that the company would sell the facilities to the Army at a price determined by Harbert at the end of the contract, instead of establishing the cost of the facilities in its offer as required by the RFP. Additionally, Harbert submitted neither a cost nor a plan for these facilities even though Harbert admits that both were required under RFP amendment No. 0001. Although Harbert argues that it was not in a position to provide a cost and plan because the RFP allegedly lacked sufficient detail, Harbert did not question this requirement prior to submission of offers and we find there was adequate information to enable offerors to respond to this requirement.

Given these proposal inadequacies, the Army is also of the view that Harbert's proposed contract costs were understated, compared with the government estimate, because the proposal did not provide sufficient equipment, facilities, and personnel.

Given the above inadequacies, which we cannot question, we consider it unnecessary to discuss the Army's other findings regarding Harbert's proposal. In our view, the above inadequacies support, in themselves, the Army's decision to exclude Harbert's proposal.

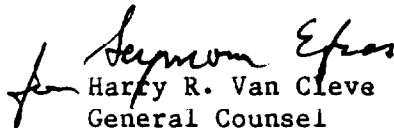
Harbert has cited our decision in Magnavox Advanced Products and Systems Co., B-215426, Feb. 6, 1985, 85-1 C.P.D. ¶ 146, in which we expressed the view to the United States Claims Court, which had sought our views, that a proposal did not appear "grossly deficient" even though it had deficiencies in 12 areas, and two of those areas involved requirements that Magnavox (the only competing offeror) could not meet without "substantial design and cost consequences." We also told the court that "we might have been inclined to recommend" that Magnavox's proposal be included in the competitive range if other offerors had competed.

Given the contingent nature of our opinion to the court, the decision cannot be considered to hold that the Magnavox proposal, containing 12 deficiencies and found technically unacceptable, was considered to be within the competitive range. Furthermore, the decision was not intended to establish any strict guidelines as to the number of deficiencies which would justify exclusion of an offer from the competitive range. Rather, the basic principles, noted above, at the beginning of our discussion of Harbert's proposal and also stated in the Magnavox decision, are for application in resolving Harbert's protest.

Harbert correctly notes that the Army has not applied the phrase "grossly deficient" to Harbert's proposal. Nevertheless, the Army has stated that Harbert's proposal did not have a reasonable chance of being selected for award which we equate to the Army's finding of a grossly deficient proposal. Although Harbert further argues that the Army's findings are not specifically related to technical, management, or quality control areas, we consider that the criticisms apply to the substance of Harbert's proposal regardless of whether the noncost criticisms are considered to relate to technical or management considerations. Given the noncost deficiencies, the Army also had serious cost criticisms with regard to Harbert's proposal.

Since the substance of Harbert's proposal reasonably was found deficient in some areas to the extent that a completely new proposal would have been necessary in the supply function and with respect to the industrial complex, we must conclude that Harbert's proposal was properly excluded from the competitive range.

The protest is denied.

  
Harry R. Van Cleave  
General Counsel